

By: Zaffirini

S.B. No. 39

A BILL TO BE ENTITLED

AN ACT

relating to guardianships for persons who have physical disabilities or who are incapacitated.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ESTATES CODE

SECTION 1. Section 1055.003, Estates Code, is amended as follows:

Sec. 1055.003. INTERVENTION BY INTERESTED PERSON. (a) Notwithstanding the Texas Rules of Civil Procedure, an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) The provisions of Subsections (a) and (b) do not apply to any person who would be entitled to notice of the filing of the guardianship application pursuant to Section 1051.104 of this code.

SECTION 2. Section 1102.002, Estates Code, is amended as follows:

Sec. 1102.002. CONTENTS OF APPLICATION FOR GUARDIANSHIP; CONFIDENTIALITY OF CERTAIN ADDRESSES. An application filed under Section 1101.001 may omit the address of a person named in the application if:

(1) The application states that the person is or was

protected by a protective order issued under Chapter 85, Family Code;

SECTION 3. Section 1357.056, Estates Code is amended as follows:

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT.

IMPORTANT INFORMATION FOR SUPPORTER

Supporter's Duties

When you accept the authority granted to a supporter under this supported decision-making agreement, you establish a "fiduciary" relationship with the adult with a disability who executes the agreement. This is a special legal relationship that imposes on you legal duties that continue until the agreement is terminated by either party, by the terms of the agreement, or by operation of law. A fiduciary duty generally includes the duty to:

(1) act in good faith;

(2) do nothing beyond the authority granted in this agreement;

(3) act loyally for the benefit of the adult with a disability making the agreement;

(4) disclose to the adult with a disability pertinent information affecting that person; and

(5) avoid conflicts that would impair your ability to act in the best interest of the person executing the agreement.

Termination of Agent's Authority

1 You must stop acting as a supporter on behalf of the
2 adult with a disability if you learn of any event that
3 terminates this agreement or your authority to act
4 under it. An event that terminates this agreement or
5 your authority to act under it includes:

6 (1) the termination of the agreement by either you or
7 the adult with a disability;

8 (2) the appointment and qualification of a guardian of
9 the person or estate;

10 (3) if the Texas Department of Family and Protective
11 Services finds that the adult with a disability has been abused,
12 neglected or exploited by you; or you are found criminally liable
13 for conduct involving the adult with a disability.

14 SECTION 4. Section [1357.101](#), Estates Code is amended as
15 follows:

16 Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF
17 LIABILITY.

18 (c) A supporter in a supported decision making agreement is
19 in a fiduciary relationship with the adult with a disability who
20 enters into the agreement, and owes to the adult with a disability
21 those duties stated in the form set forth in Section [1357.056](#).

22 SECTION 5. Section [752.051](#), Estates Code, is amended as
23 follows:

24 Sec. 752.051. FORM OF STATUTORY DURABLE POWER OF ATTORNEY.

25 If any agent named by me dies, becomes legally
26 disabled, resigns, or refuses to act, or is removed by
27 a court of competent jurisdiction, I name the

1 following (each to act alone and successively, in the
2 order named) as successor(s) to that agent:

3 _____
4 _____.

5 SECTION 6. Section 752.052, Estates Code, is amended as
6 follows:

7 Sec. 752.052. RELATION OF ATTORNEY-IN-FACT TO
8 COURT-APPOINTED GUARDIAN OF ESTATE.

9 (a) The appointment by a court in a guardianship proceeding
10 in Texas of a temporary or permanent guardian of the estate for a
11 ward who is the principal under a statutory durable power of
12 attorney automatically revokes all powers and authority granted to
13 each agent or attorney-in-fact named in the power of attorney,
14 unless the court in the guardianship proceeding enters an order
15 that:

16 (1) affirms and states the effectiveness of the power
17 of attorney; and

18 (2) confirms the validity of the appointment of the
19 named agent or attorney-in-fact.

20 SECTION 7. Subtitle P, Chapter 753, Section 753.001,
21 Estates Code is added as follows:

22 Sec. 753.001. REMOVAL OF ATTORNEY-IN FACT.

23 (a) The following persons may file a petition to remove the
24 currently serving attorney-in-fact named in a durable power of
25 attorney and appoint a successor attorney-in-fact who is named in
26 the durable power of attorney:

27 (1) any person named as a successor attorney-in-fact

1 in the durable power of attorney; or

2 (2) as a least restrictive alternative to
3 guardianship, any interested person (including an attorney
4 ad-litem or guardian ad-litem) in a guardianship proceeding.

5 (b) An attorney-in-fact may be removed on the petition of an
6 interested person, and after hearing, a court may, in its
7 discretion, remove an attorney-in-fact and deny part or all of the
8 attorney-in-fact's compensation, if allowed by the terms of the
9 power of attorney, if:

10 (1) the court finds that the attorney-in-fact has
11 breached his or her fiduciary duties to the principal;

12 (2) the court finds that the attorney-in-fact has
13 materially violated or attempted to violate the terms of the
14 durable power of attorney and the violation or attempted violation
15 results in a material financial loss to the principal;

16 (3) the attorney-in-fact becomes incapacitated or is
17 otherwise incapable of properly performing his or her duties;

18 (4) the attorney-in-fact fails to make an accounting
19 that is required by law or by the terms of the power of attorney or
20 as ordered by the court; or

21 (5) the court finds other cause for removal.

22 (c) A cause of action brought under subsection (a) may be
23 filed in any court with original probate jurisdiction.

24 SECTION 8. Subtitle P, Chapter 753, Section 753.002,
25 Estates Code is added as follows:

26 Sec. 753.002. APPOINTMENT OF DESIGNATED SUCCESSOR
27 ATTORNEY-IN FACT.

1 (a) If a person currently serving as an attorney-in-fact
2 under a durable power of attorney is removed pursuant to Section
3 753.001 of this code, the court shall not authorize the appointment
4 of any successor attorney-in-fact named in the durable power of
5 attorney unless the court enters findings that such person is
6 qualified and capable of properly performing his or her duties to
7 the principal, pursuant to the terms of the durable power of
8 attorney and other applicable law.

9 (b) Within twenty-one days after entry of an order removing
10 an attorney-in-fact, pursuant to Section 753.001, and appointing a
11 successor attorney-in-fact, as provided in this subsection (a), the
12 successor attorney-in-fact shall provide actual notice of such
13 order to all appropriate third-parties who the attorney-in-fact has
14 reason to believe have relied, or may rely, on the durable power of
15 attorney.